

Maine Revised Statutes
Title 38: WATERS AND NAVIGATION
Chapter 16: SALE OF CONSUMER
PRODUCTS AFFECTING THE ENVIRONMENT

§1609. RESTRICTIONS ON SALE AND DISTRIBUTION OF BROMINATED FLAME RETARDANTS

For purposes of this section, "brominated flame retardant" means any chemical containing the element bromine that is added to a plastic, foam or textile to inhibit flame formation. [2007, c. 296, §1 (NEW) .]

1. "Penta" mixture and "octa" mixtures of polybrominated diphenyl ethers. Effective January 1, 2006, a person may not sell or offer to sell, or distribute for promotional purposes, a product containing more than 0.1% of the "penta" or "octa" mixtures of polybrominated diphenyl ethers.

[2007, c. 296, §1 (AMD) .]

2. Review; report.

[2007, c. 296, §1 (RP) .]

3. Application.

[2007, c. 296, §1 (RP) .]

4. "Deca" mixture of polybrominated diphenyl ethers in home furniture. Effective January 1, 2008, a person may not manufacture, sell or offer for sale or distribute for sale or use in the State any of the following products that contain the "deca" mixture of polybrominated diphenyl ethers:

A. A mattress or mattress pad; and [2007, c. 655, §17 (AMD) .]

B. Upholstered furniture intended for indoor use in a home or other residential occupancy. [2007, c. 296, §1 (NEW) .]

[2007, c. 655, §17 (AMD) .]

5. "Deca" mixture of polybrominated diphenyl ethers in electronics. Effective January 1, 2010, a person may not manufacture, sell or offer for sale or distribute for sale or use in the State a television or computer that has a plastic housing containing more than 0.1% of the "deca" mixture of polybrominated diphenyl ethers.

[2009, c. 121, §17 (AMD) .]

5-A. "Deca" mixture of polybrominated diphenyl ethers in shipping pallets. This subsection governs the manufacture and sale of shipping pallets and products made from shipping pallets containing the "deca" mixture of polybrominated diphenyl ethers, referred to in this subsection as "the "deca" mixture."

A. A person may not manufacture, sell or offer for sale or distribute for sale or use in the State a product that is manufactured from recycled shipping pallets containing the "deca" mixture, except that this prohibition does not apply to the manufacturing, selling or distribution of shipping pallets that are manufactured from recycled shipping pallets containing the "deca" mixture. [2009, c. 610, §2 (NEW) .]

B. Beginning January 1, 2012, a person may not manufacture, sell or offer for sale or distribute for sale or use in the State a shipping pallet containing the "deca" mixture, other than a shipping pallet made from recycled shipping pallets or described in subsection 11, paragraph A-1. [2009, c. 610, §2 (NEW) .]

C. By January 1, 2013, and annually thereafter, a manufacturer or owner of shipping pallets subject to the restrictions of this subsection shall submit a report to the department that certifies its compliance with the restrictions of this subsection. The report must include data on the bromine content of a representative number of shipping pallets and an interpretive analysis of the data sufficient to demonstrate compliance with this subsection. The board may adopt rules to implement the reporting requirements of this subsection. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2009, c. 610, §2 (NEW) .]

[2009, c. 610, §2 (NEW) .]

5-B. Exemptions. Notwithstanding subsection 5-A, paragraph B, a person may sell or distribute a shipping pallet containing the "deca" mixture of polybrominated diphenyl ethers for which an exemption is obtained pursuant to this subsection. A manufacturer or owner of a shipping pallet may apply for an exemption by filing a written petition with the commissioner. The petition must include a proposed duration for the exemption. The commissioner shall grant an exemption upon finding that:

A. A safer alternative that meets the criteria of subsection 14 does not exist; [2009, c. 610, §3 (NEW) .]

B. A shipping pallet containing a proposed safer alternative fails to meet applicable fire safety standards, approvals and tests or relevant performance standards; [2009, c. 610, §3 (NEW) .]

C. Additional time is needed by the petitioner to complete testing or obtain approval to ensure that a shipping pallet containing a proposed safer alternative complies with applicable fire safety standards, approvals and tests; or [2009, c. 610, §3 (NEW) .]

D. Additional time is needed by the petitioner to modify the manufacturing process in order to produce a shipping pallet containing the safer alternative. [2009, c. 610, §3 (NEW) .]

The commissioner may not grant an exemption pursuant to this subsection that extends beyond January 1, 2013.

[2009, c. 610, §3 (NEW) .]

6. Exemptions. The restrictions in subsections 4 and 5 do not apply to the following products containing the "deca" mixture of polybrominated diphenyl ethers:

A. Transportation vehicles or products or parts for use in transportation vehicles or transportation equipment; [2007, c. 296, §1 (NEW) .]

B. Products or equipment used in industrial or manufacturing processes; or [2007, c. 296, §1 (NEW) .]

C. Electronic wiring and cable used for power transmission. [2007, c. 296, §1 (NEW) .]

[2007, c. 296, §1 (NEW) .]

7. Manufacturer responsibility. Effective January 1, 2008, a manufacturer of a product containing polybrominated diphenyl ethers restricted under subsection 1, 4 or 5 must notify persons that sell the manufacturer's product of the requirements of this section. Beginning January 1, 2013, a manufacturer of a product containing polybrominated diphenyl ethers restricted under subsection 5-A must notify persons that sell the manufacturer's product of the requirements of this section.

[2009, c. 610, §4 (AMD) .]

8. Retailer assistance. The department must develop a program to assist retailers in identifying products that might contain polybrominated diphenyl ethers in their inventory.

[2007, c. 296, §1 (NEW) .]

9. Interstate clearinghouse. The department may participate in the establishment and implementation of a regional, multistate clearinghouse to assist in carrying out the requirements of this chapter and to help coordinate education and outreach activities, review risk assessments and alternatives to the use of chemicals listed in this section, and carry out any other activities related to the administration of this chapter.

[2007, c. 296, §1 (NEW) .]

10. Review; report.

[2007, c. 643, §1 (RP) .]

11. Application. This section does not prohibit the sale, distribution or use of:

A. Used products; [2009, c. 121, §18 (NEW) .]

A-1. Shipping pallets manufactured before January 1, 2012 that contain the "deca" mixture of polybrominated diphenyl ethers or shipping pallets for which an exemption has been granted under subsection 5-B; [2009, c. 610, §5 (NEW) .]

B. Except as provided in subsection 5-A, products if the presence of polybrominated diphenyl ether is due solely to the use of recycled material; or [2009, c. 610, §5 (AMD) .]

C. Replacement parts that contain the "octa" or "penta" mixtures of polybrominated diphenyl ether if the parts are for use in a product manufactured before January 1, 2006. [2009, c. 121, §18 (NEW) .]

[2009, c. 610, §5 (AMD) .]

12. Enforcement. If there are grounds to suspect that a product is being offered for sale in violation of this section, the commissioner may request the manufacturer of the product to provide a certificate of compliance. Within 10 days of receipt of a request, the manufacturer shall:

A. Provide the commissioner with a certificate attesting that the product complies with the requirements of this section; or [2007, c. 296, §1 (NEW) .]

B. Notify persons who sell the manufacturer's products in this State that the sale of the product is prohibited and provide the commissioner with a list of the names and addresses of those notified. [2007, c. 296, §1 (NEW) .]

When it appears that a product has been sold, offered for sale or distributed in this State in violation of this section, the commissioner may take enforcement action in accordance with section 347-A against the product manufacturer. For the purpose of this section, "manufacturer" means any person who manufactured the final product or whose brand name is affixed to the product. In the case of a product that was imported into the United States, "manufacturer" includes the importer or domestic distributor of the product if the person who manufactured or assembled the product or whose brand name is affixed to the product does not have a presence in the United States.

[2007, c. 296, §1 (NEW) .]

13. Department rule-making authority; flame retardants. If the commissioner determines, in consultation with the Department of Health and Human Services, Maine Center for Disease Control and Prevention and the Department of Public Safety, Office of the State Fire Marshal, that a flame retardant is

harmful to the public health and the environment or meets the criteria as a prohibited replacement pursuant to subsection 14, paragraph B and a safer alternative to the flame retardant as set forth in subsection 14 is available, the commissioner may adopt rules to prohibit the manufacture, sale or distribution in the State of:

A. A mattress, a mattress pad or upholstered furniture intended for indoor use in a home or other residential occupancy that contains that flame retardant; [2009, c. 610, §6 (AMD).]

B. A television or computer that has a plastic housing containing that flame retardant; or [2009, c. 610, §6 (AMD).]

C. A plastic shipping pallet that contains that flame retardant. [2009, c. 610, §6 (NEW).]

The commissioner's rulemaking under this subsection must be made in accordance with Title 5, chapter 375, subchapter 2-A. The department shall report any rulemaking undertaken pursuant to this subsection to the joint standing committee of the Legislature having jurisdiction over natural resources matters. The joint standing committee of the Legislature having jurisdiction over natural resources matters may submit legislation relating to the department's report. For purposes of this subsection, "flame retardant" means any chemical that is added to a plastic, foam or textile to inhibit flame formation. Rules adopted pursuant to this subsection are routine technical rules.

[2009, c. 610, §6 (AMD).]

14. Safer alternatives; policy. It is the policy of the State that the "deca" mixture of polybrominated diphenyl ethers be replaced with safer alternatives as soon as practicable.

A. For the purposes of this subsection, "safer alternative" means a substitute process, product, material, chemical, strategy or any combination of these that:

- (1) When compared to the chemical to be replaced would reduce the potential for harm to human health or the environment or has not been shown to pose the same or greater potential for harm to human health or the environment as the chemical to be replaced;
- (2) Serves a functionally equivalent purpose that enables applicable fire safety standards, approvals and tests and relevant performance standards to be met;
- (3) Is commercially available on a national basis; and
- (4) Is not cost-prohibitive. [2009, c. 610, §7 (NEW).]

B. Effective June 1, 2011, a person subject to the restrictions under this section may not replace the "deca" mixture of polybrominated diphenyl ethers with a chemical alternative that the commissioner, in consultation with the Department of Health and Human Services, Maine Center for Disease Control and Prevention, determines:

- (1) Has been identified as or meets the criteria for identification as a persistent, bioaccumulative and toxic chemical by the United States Environmental Protection Agency;
- (2) Is a brominated or chlorinated flame retardant, unless the person demonstrates to the satisfaction of the commissioner that the flame retardant is a safer alternative; or
- (3) Creates another chemical as a breakdown product through degradation or metabolism that meets the provisions of subparagraph (1).

A replacement to the "deca" mixture of polybrominated diphenyl ethers may contain an amount of the chemicals listed or described in subparagraphs (1), (2) and (3) equal to or less than 0.1%, except that a replacement may contain an amount of a halogenated organic chemical containing the element fluorine equal to or less than 0.2%.

Upon request by the commissioner, a person subject to the restrictions under this subsection shall provide the commissioner with all existing information about the hazard and exposure characteristics of the replacement chemical that is known to, in the possession or control of or reasonably ascertainable by the person. [2011, c. 160, §1 (AMD).]

[2011, c. 160, §1 (AMD) .]

15. Confidentiality. Information submitted to the department pursuant to this section may be designated as confidential by the submitting party in accordance with the provisions set forth in section 1310-B and, if the information is so designated, the provisions of section 1310-B apply.

[2009, c. 610, §8 (NEW) .]

SECTION HISTORY

RR 2003, c. 2, §119 (RAL). 2003, c. 629, §1 (NEW). 2003, c. 661, §2 (NEW). 2007, c. 296, §1 (AMD). 2007, c. 643, §1 (AMD). 2007, c. 655, §§17, 18 (AMD). 2009, c. 121, §§17, 18 (AMD). 2009, c. 610, §§2-8 (AMD). 2011, c. 160, §1 (AMD).

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